

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BERTRAN CABRERA,

Plaintiff,

v.

RANDY MITCHELL d/b/a
EVERGREEN ENTERPRISES,

Defendant.

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CIVIL ACTION H-14-666

MEMORANDUM OPINION AND ORDER

Pending before the court are plaintiff's request for entry of default and motion for default judgment against defendant Randy Mitchell d/b/a/ Evergreen Enterprises. Dkts. 10, 13. The request and motion are GRANTED.

Pursuant to Federal Rule of Civil Procedure 55, entry of default judgment is appropriate when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise. FED. R. CIV. P. 55(a). Given defendant's failure to answer the complaint in a timely manner, the court has the authority to accept all well-pleaded facts in the complaint as true and to award relief sought by the plaintiff. *Nishimatsu Constr. Co. v. Hous. Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975).

Defendant was properly served through a process server who personally delivered documents to defendant at his last known address. Dkt. 7. The summons was addressed to defendant and properly explained the consequences of failing to answer. *Id.* Plaintiff properly mailed a copy of the request for entry of default judgment and the motion for default judgment via certified mail as required by Local Rule 5.5. Dkts. 10, 13.


Plaintiff's complaint alleges violations of the Fair Labor Standards Act for failure to pay overtime and minimum wages. Plaintiff has shown evidence of \$5,605.60 in unpaid overtime and minimum wages. Because defendant has not shown that his violation of the FLSA was in "good faith," plaintiff is also entitled to liquidated damages in the amount of \$5,605.60. 29 U.S.C. § 2617 (a)(1)(A)(iii).

The FLSA authorizes an award of attorneys' fees and costs to prevailing plaintiffs. 29 U.S.C. § 216(b). Plaintiff requested \$2,575.00 in attorneys' fees and \$465.00 in costs. The courts finds these amounts reasonable.

Plaintiff's request for entry of default and motion for default judgment (Dkts. 10, 13) are GRANTED. The court will enter a separate final judgment consistent with this order.

It is so **ORDERED**.

Signed at Houston, Texas on February 24, 2015.



Gray H. Miller
United States District Judge